

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DANIEL BURDICK)	
Claimant)	
VS.)	
)	Docket No. 217,189
BLACKBURN, INC.)	
Respondent)	
AND)	
)	
UNITED STATES FIDELITY & GUARANTY CO.)	
Insurance Carrier)	

ORDER

Respondent appealed the preliminary hearing Order entered by Administrative Law Judge John D. Clark dated December 17, 1996.

ISSUES

Respondent requested the Appeals Board to review the following issues:

(1) Whether claimant suffered an accidental injury that arose out of and in the course of his employment with the respondent.

(2) Whether timely notice of the accident was given to the respondent.

(3) Whether the Administrative Law Judge exceeded his jurisdiction by ordering payment of medical bills and temporary total disability benefits from October 8, 1996, to December 3, 1996.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

(1) The first two issues raised by respondent are issues that grant the Appeals Board jurisdiction to review preliminary hearing findings. See K.S.A. 1996 Supp. 44-534(a).

Claimant was employed by respondent as a welder's helper in the respondent's fabrication shop located in El Dorado, Kansas. Claimant worked for the respondent from August 9, 1996, until he was laid off on September 20, 1996. Claimant alleges he injured both his right ankle and left knee when he fell at work on August 26, 1996. Respondent acknowledges claimant fell at work and sprained his right ankle. However, respondent denies claimant has a present need for medical treatment for the right ankle injury and further denies claimant suffered an injury to his left knee in such accident. The Administrative Law Judge had the opportunity to observe claimant and his supervisor, Jack Alford, testify in person at the preliminary hearing. Medical records from the emergency room at the Susan B. Allen Memorial Hospital located in El Dorado, Kansas, and George A. Martin, M.D., were also made a part of the preliminary hearing record.

Claimant testified he fell on his left knee when he twisted his right ankle as he stepped on the two to three inch lip on the concrete floor on the premises of the respondent on August 26, 1996. Claimant immediately suffered pain and swelling in his right ankle. Respondent provided claimant with ice for the pain and swelling. Claimant testified his left knee was bothering him a "little bit" but he did not notify respondent of the left knee injury because he felt the injury to be insignificant. Claimant remained on respondent's premises for the rest of the shift, but was not allowed to be on his feet and did not return to work. Claimant did return to work the following day and was able to work with some pain in his ankle until he was laid off on September 20, 1996. Claimant testified his left knee symptoms had subsided by the time of the lay off.

Claimant did not require medical treatment for either his right ankle injury or his left knee until after the layoff. Claimant, however, did seek medical treatment for his left knee at the Susan B. Allen Memorial Hospital emergency room located in El Dorado, Kansas, on September 30, 1996. Claimant testified the night before, September 29, 1996, he was at his brother's house assembling model cars and got up to go to the refrigerator when he felt a pop in his left knee. The left knee became symptomatic and swelled to the point that the next evening he had such increased symptoms he had to go to the emergency room for treatment. The physician at the emergency room diagnosed a strain of the medial collateral ligament of the left knee. Claimant was prescribed pain medication, placed on crutches, and told to keep the weight off his left leg.

Claimant's attorney referred claimant for further treatment of his right ankle and left knee injuries to George A. Martin, M.D., an orthopedic surgeon located in Ponca City, Oklahoma, on October 8, 1996. Dr. Martin reported claimant sustained an injury to his right ankle and left knee in an accident that occurred in August while he was employed by

the respondent. Dr. Martin diagnosed a lateral ankle sprain and osteochondritis dissecans of the left knee with the cartilage fragment not separated. Dr. Martin prescribed conservative treatment and took claimant off work until claimant's next visit which he scheduled in two months. Claimant was next seen by Dr. Martin on December 3, 1996, and the doctor at that time released claimant for increased activity.

As a result of the increased activity release, claimant testified he was walking down the street two days after his appointment with Dr. Martin on December 3, 1996, and felt a pop in his right ankle causing pain and swelling in the ankle. Claimant's mother immediately took claimant to the emergency room in Ponca City, Oklahoma, where he was seen by an emergency room physician who wrapped his ankle with an ace bandage and told him to stay off the ankle. At the preliminary hearing, claimant testified he continued to have pain and discomfort in both his right ankle and left knee.

At this stage of the proceedings and with the present state of the evidentiary record, the Appeals Board concludes claimant's credibility was the most important factor in determining whether claimant's knee injury occurred at work. The Administrative Law Judge had the opportunity to assess that necessary credibility as the claimant testified in person before him. The Appeals Board, therefore, giving some deference to the Administrative Law Judge, coupled with medical opinions of Dr. Martin, affirms the Administrative Judge's finding that both claimant's right ankle and left knee were injured at the time claimant fell on August 26, 1996, while employed by the respondent.

(2) The respondent also claims that claimant's left knee injury is not compensable because claimant failed to give the respondent notice of accident within ten days as required by K.S.A. 44-520. As noted above, the Appeals Board has affirmed the Administrative Law Judge's finding that claimant's left knee injury occurred at work. The preliminary hearing record also established that on the day the claimant fell, respondent had knowledge of his fall and in fact provided claimant with ice to treat his right ankle sprain. Accordingly, the Appeals Board finds the respondent had notice of claimant's accident within ten days thereof, which satisfies the requirements of K.S.A. 44-520.

(3) Additionally, the respondent questions the authority of the Administrative Law Judge to order payment of medical bills and weekly temporary total disability benefits. Pursuant to K.S.A. 1996 Supp. 44-534(a), the Administrative Law Judge is given the authority to either grant or deny medical and temporary total disability compensation benefits pending the conclusion of a full hearing on the claim. As previously found on numerous prior occasions, the Appeals Board finds it does not have jurisdiction to review this issue at this juncture of the proceedings.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge John D. Clark dated December 17, 1996, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of February 1997.

BOARD MEMBER

c: E. L. Lee Kinch, Wichita, KS
Patricia A. Wohlford, Overland Park, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director